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Arizona Governors' messages

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SPECIAL MESSAGE

TO THE

Twenty-Fourth Legislative Assembly of Arizona.

Office of the Governor,
Phoenix, Arizona,

March 1, 1907.

To the Council and the House of Representatives:

The question of taxation, especially as it applies to mining property, has gained even a greater importance than when I gave to you my biennial message, because, for at least one reason, a specific bill relating to that subject is pending before you for your consideration.

In compliance with the expressed desire of your committees having charge of this bill, I appeared before them at a meeting held by them on the 21st instant at which were present members of both houses of the Legislative Assembly, advocates of the bill known as Council Bill No. 45 (the only measure as I now understand it under consideration by you) and some others. As it was apparent that the bill was designed to change radically our revenue system, it then seemed to me—and it does now—that it was incumbent upon those who advocated its adoption to show either an evil to be remedied or a good to be accomplished by its provisions, and that those provisions are adequate to either. But we were not favored with a discussion of the merits of the bill by those who proposed it, and the result of the meeting was simply a polemic discussion of the subject in general. I did state that I was opposed to the bill, in principle and in de-

tail, as that bill is now before you. I assume that it is your desire that I should, and as it is entirely within my province to do so, I now will, suggest to you certain remedial legislation, applicable not only to the taxation of mines, but to every other class of property in the territory designed to secure the object, which cannot be deemed to be as other than the right one, of the even distribution of the burdens of taxation upon all alike and which is embodied in a bill for that purpose which I transmit with this message.

Before, however, giving you some of my reasons if not all of them for recommending to you the passage of the bill I transmit herewith, it appears to me that I should state some of the reasons which influence my opposition to the bill pending before you.

In doing this I shall endeavor to avoid, as far as I can, a mere controversial spirit. In this as in all matters you and I should be governed by an earnest desire to learn what is the right thing to do and then do it. Neither of us can do this if we allow ourselves to be influenced by fear or favor by prejudice or bias.

There are certain principles applicable to the question of taxation that I must assume are indisputable. I think one of them can be stated to be that taxes should be borne by those most able to bear them and in the proportion of their ability to bear them. This principle, somewhat modified howev-

er, is embodied in our revenue system, is the one recognized in every just system of taxation and never ignored except inadvertently or by corrupt or ill-advised legislation or by dishonest property owners or in practice by inefficient or corrupt taxing officers.

That principle I may state as modified and embodied in our law is that every owner of property in this territory should pay taxes in proportion to the value of his property. This will appear so just that it instantly appeals to us. And so just is it that nothing short of compelling reasons can justify our departure from it. To depart from the rule of the equality of the burden leads us at once to the rule of inequality of the burden—and who has the hardihood to advocate the rule that the burdens of taxation should be unequally borne?

Whether the taxation of one-fifth of a mine's product would yield this or that sum of money is of purely secondary consideration. The proper distribution of the burden is the only real question before us.

Our statute provides that all property shall be valued at its cash value, and tells us what is meant by that expression. The application of this rule in practice would impose the rule of equality of taxation indisputably. It is equally true that a valuation of all property at one-half of its value or at any uniform fraction of its value would insure uniformity. But to value some classes of property at its cash value, others at 75 per cent of that value, still others at 50 per cent, others at 30, others at 10 and others at 5 per cent destroys equality, imposes gross inequality and consequent injustice.

If we are to depart at all from the statutory rule of assessing at the cash value, then simple justice demands that the departure and the degree of departure should be the same as to all classes of property.

Council Bill No. 45, the one you have under consideration, does propose to change this rule radically. For the mo-

ment it is not material to say whether the rule proposed by that bill raises the valuation of mines to a sum above their cash value—that is above that value in the words of our statute “at which the property would be taken in payment of a just debt due from a solvent debtor” or whether it would reduce it to one-half of or to one-tenth or to one-fiftieth of that value—it does inevitably depart from the rule of cash value; and for this departure, is a good and sufficient reason advanced?

It is urged that the value of mines cannot be ascertained. It is not urged that they have no value. If they have no value then of course they would not be taxed. But I must insist that they have a value, and that value can be reasonably ascertained. I am free to admit that it may be very difficult to ascertain the exact value of some mines. If the mine be an undeveloped, non-productive one, it may be so difficult to estimate its value that any one would hesitate to say that it was worth as much as \$50.00—if so, that mine is practically worthless. Any property, the value of which cannot be confidently fixed at some sum, is valueless—of which it cannot be safely said that it is worth at least some sum, has no value—and of course that property cannot be taxed. But any property of which it can be safely said that it is worth at least a given sum, is worth certainly not less than that sum.

Remember always, that in speaking of present values, for it is only of present values we have to deal, we tax property only year by year and we are concerned in this value only year by year. The evidence of value is fairly easily obtained. The opinion of men who own, buy, sell and trade in horses is taken everywhere as evidence of the value of horses; in the courts where these facts are finally tried such opinions are taken as conclusive and definite evidence.

The opinions of men who own buy and sell ranches are everywhere taken as evidence of the value of ranches.

The opinions of men who raise, buy, and sell cattle are taken as evidence of the value of cattle.

The opinions of merchants are taken as to the value of stocks of goods.

And I am completely confident that opinions of honest, capable men whose business it is to operate and deal in mines can fix a value on the mines in Arizona at a sum in detail or in the aggregate "at which these mines would be taken in payment of a just debt due from a solvent debtor."

I think I may say further, not with the hope of not being contradicted, but with complete confidence that it cannot be successfully contradicted, that a value can be fixed on the mines of Arizona at a sum which the shrewdest, most conservative, most capable men in the United States would buy them as an investment. The mines must be worth at least that much, beyond any cavil. And that sum I will further venture to say—and it is capable of easy demonstration—is not less than ten times as much as the valuation of them would be under the provisions of Council Bill No. 45. And assuming that property is valued for taxation in this territory at not over 33 1-3 per cent of its value, then the valuation of mines for taxation would be proved as conclusively as any fact can be proved by human evidence to be three times the valuation that would be placed upon them by Council Bill No. 45.

And this question is easily tested—it need not rest on my assertion an instant—do precisely with the mines as you do with any other property. Let them be assessed by the same authorities under the same rules as other property is assessed, and if an excessive valuation is made let the owner of the cattle, of the sheep, of the ranch, of the stock of merchandise, of the humble home or of the mine, if they or any of them feel aggrieved, go into court and there try out the question. In case of irreconcilable dispute the courts are always the final arbiters, and they are always equipped with in-

finitely better means of ascertaining values or any other fact than is even the legislature. The mine owner must trust to the courts for the protection of his rights against all encroachment—he can and he does call upon them to defend and preserve his rights—why not submit this question between the public and himself likewise to the courts, as our present law now does, and which Council Bill No. 45 prevents?

I do not wish to be misunderstood. Council Bill No. 45 probably does permit an appeal to the courts but ties the hands of the court as to the question of the value of mines, limiting it to ascertaining one-fifth of the gross bullion product while as to every other class of property, the courts are to assess the full cash value of the property in question.

If the court should decide of a given mine that its value is that of one-fifth of its bullion product for the year, then it will so adjudge; but if it should find—and it will not find at all without satisfactory evidence—that that value is only one-tenth of its bullion product for the year, in justice to the mine owner it ought and, if permitted, will so decide; and if it should be shown that the value is one-half or two-thirds or the whole of or more than its bullion product for the year no one can for a moment say that it ought not so decide.

Council Bill No. 45 limits the court, however, to finding the mine to be worth for the purposes of taxation only one-fifth of its bullion product for the year; or in other words as expressed by some of the representatives of the producing mines, the value of the mine is simply its net annual profit. Our law is, as to all other property, that the court shall fix the value at the full cash value, which as you know in most instances is many times the net annual profits. I am not one of those who will consent to the proposition that Arizona's mines have no value, or that their value cannot reasonably be as-

certained. We advertise daily to the world that our mines are enormously valuable. Are they of purely speculative value? Is it true that Arizona's mines are a fraud, a delusion and a snare? Is it true of our great producing mines that there is no fair prospect of their lasting beyond the current year?

Is it true that mining—I am not speaking of prospecting—in Arizona is purely a gamble, with chances so slight that we dare not go beyond one-fifth of their annual bullion product as the utmost estimate of their value? Shall we advertise the fact that our mines are so short lived that to go beyond a single year in estimating their value is unjust, unfair and unwarranted by the facts?

It has been said that Arizona is not fitted for statehood because of her want of resources. And specific allusion has been made to the ephemeral character of our resources, the impermanence and instability of our mines. Shall we admit this by the enactment of a statute like that of Council Bill No. 45? It is no answer that Council Bill No. 45 is a mere re-enactment of laws of other states. In the first place, it is not like the laws of any other state, and again I have to say that the history of some of the states on this and like subjects ought to teach careful men, men who respect Arizona, and who hope to have Arizona respected, to avoid as pestilential their legislation on these subjects.

Equality of taxation, or, as otherwise expressed, uniformity, must be at least the object of any law relating to that subject.

The valuation of any class of property at one-fifth of its annual product, or in other words, making the net income of property the basis for computation of taxation upon one class of property, while all others have imposed upon them the same rate computed upon their full cash value is in terms, a violation of the rule of equality. They are made expressly unequal by the

terms of the proposed law. If, in fact, one-fifth of the annual product of mines is a proper estimate of their value or of any other property, it is the sworn official duty of the assessor to so fix it; if he fails to do his duty, then it is the sworn official duty of the board of supervisors to do it; and if they fail, then it is the duty of the territorial board of equalization to do it. If the value, in fact, be less or more than one-fifth of the annual product, it is the duty of the assessor in the first instance, and in the event of his failure, of the board of supervisors, to fix the value at less or more than one-fifth of the annual product as the case may be—just as their duty is in relation to any other property. If the legislature can fix the rule for ascertaining the value of mines or of any other property, why cannot the assessor, who sees and examines it, fix it, and the board of supervisors review it? Have not these officers better facilities for ascertaining the facts upon which to fix values than the legislature, unless the legislature sits all the time or sends committees to examine the properties? If the rule proposed by Council Bill No. 45, that one-fifth of the gross annual products of an industry—in other words, its net profits—is a proper one for mines, why not apply it to every other industry? If the railroads of this territory earn an average net profit of \$3,500.00 per mile, why not value them for the purpose of taxation at \$3,500.00 per mile? If the average net profit of the rancher is 25 per cent of the ranching business, why not tax ranches on the basis of 25 per cent of their gross annual products? I think it may be said too, that 20 per cent is not nearly the net profits of our large copper mines.

There is but one reason given by the advocates of Bill No. 45 why the rule of a fifth or any other fraction of the gross annual products should be applied to mines and not to other property, and that is, the uncertainty of the life of the mines.

It has been said that no man can see ahead of the drill, and that the next shot in a mine may discover that it is exhausted. We must admit this to be true just as we must admit that any proposition is true that asserts a possibility, if the proposition is not contradictory in itself. Everything is possible that cannot be demonstrated to be impossible. It was possible on the 17th of April 1906, that on the next day an earthquake and a conflagration might overtake the beautiful and prosperous city of San Francisco and destroy hundreds of lives and millions of property—it was possible; but who in all San Francisco counted upon that possibility, who insisted because of that possibility, property there should be valued at one-fifth of its gross annual income because of the uncertainty of the continued existence of that property? But the earthquake and conflagration of the next day did conclusively prove its possibility. So that to say that any catastrophe is possible must be admitted. But might we not, in the ordinary conduct of our affairs consider the evidence of the possibility of such events and their probable remoteness or proximity? What is the probability that the next shot in our mines will sound the death knell of the chiefest and most prosperous industry of our commonwealth!—and I only use the language of the advocates of the Bill! I know that it sounds absurd.

It has been asserted that thousands of dollars have been expended in mining operations in this territory that have been utterly lost. This is conceded, but I do not see that this is relevant to the taxation of the property in which money is invested and which is profitable. We do not propose to tax those who invested and lost. It is again asserted as a reason for putting mines in a specially favored class, that more money has been invested than has been returned—that may be true, but I do not believe it—and it is not those who have so lost that are here urging that argument.

It is even urged that more money is lost in Arizona in the mining business than is made. Again I must protest in the name of all Arizona against any such statement. We point with pride to the great remunerative mines in Arizona and upon them, we base our claim to being prosperous. It is said, we want to invite capital to the still further development of our great mining industry. Shall we expect capital to come to us when we, by our legislation, declare that the mining business in Arizona is conducted at a loss?

There is no more timid thing in the world than capital. It takes alarm at the slightest suggestion of approaching danger. It is cautious to such a degree that it is proverbial. Before an investment, it will eliminate every chance that it can of uncertainty of investment or returns upon it. If there were even a remote chance that the next shot fired in the Arizona mines would explode the bubble of their prosperity, the stock, not only of the mines of Arizona, but of the railroads built especially to meet the demands of the traffic, would go tumbling in a crash. Is it to be supposed for a moment that the men who built the railroads into Bisbee, Douglas, Tombstone, Globe, Clifton, Morenci, Silver Bell, the Twin Buttes, into Congress and the Bradshaws, did so with the belief that the life of those camps was only a matter of a few shots—aye, of only a few more years? Is the beautiful town of Douglas built upon the idea that the mines that give it its reason for existence are but temporary, short lived and ephemeral? Were the hundreds of thousands of dollars expended in buildings and machinery—not temporary buildings, but buildings built to last half a century,—by men who believed that the mines might soon be exhausted? It would be an insult to the intelligence and sagacity of these men to say that they built upon so unsound a foundation. I venture the statement that there is not the owner of a producing copper mine in Arizona today—of the

very least of them—who will not be candid enough to say that his mine will live at least ten years longer—and many of them five and ten times that. That many of them will pay enormous dividends for many years to come, and that upon capital stock long ago paid back—if, gentlemen, there be but a single mine of that character, it is our plain duty to see that that mine is justly taxed as other property is taxed and Council Bill No. 45 makes that impossible. If you have not the facts upon which to say that this is true or the means to acquire them, the assessor and the board of supervisors have, and if they have not as complete power to ascertain the facts as they should have, then of course it is your duty to give them the means to acquire this knowledge as they have to acquire it of other property.

I admit that some mines in the territory have become exhausted and that others may become so, but it never comes as a surprise—and while this may be so, it has almost always been confined to gold and silver mines and not to copper mines. And is not this fact taken into consideration by investors? Is it not a fact that gold and silver mines are not as valuable in the market, as investments, as copper mines—is not this the case in the market; and if so, should it not also be taken into consideration by the assessor and by the board of supervisors?

If it be difficult to ascertain the exact value of a producing mine, that does not mean that we cannot approach it somewhat nearly—and in all justice we should approach it with a fair effort to get at its true value. You know and I know that there is no danger, under our present system, of over-estimating the value of the producing mines for the purpose of taxation. That there may be some element of uncertainty of the longevity of a particular mine will always be taken into consideration by the assessor and the local board—that if they or either of them fail in that respect, and over-estimate

the value of a mine, or of any other property there is complete remedy under our present law.

One of my objections to Council Bill No. 45 is, therefore, that it is unfair, unjust and unequal to apply the rule of fixing the valuation of mines by taking one-fifth of their annual product as their value unless the same rule is applied to all other kinds of property—the establishment of different rules makes equality impossible.

I have the further objection that even as among producing mines the rule laid down in that bill will inevitably work gross inequality. I need not more than suggest to you that a mine yielding 3 per cent copper ore is not worth nearly one-half as much as one that yields 6 per cent copper ore even if all other things were equal and the gross bullion output be identically the same.

I need not more than further suggest that some mines are producing and are paying from even as high as 50 or even 100 per cent profit, while others are producing at a loss. Council Bill No. 45 permits of no adjustment of these gross inequalities. Admittedly the mine producing at a loss and the one producing at 50 or 100 per cent profit, although their product may equal in value, are not of the same value. Some opportunity ought to be afforded to adjust this inequality—but Council Bill No. 45 prevents it. If it be said that the mine owner whose mine, while producing, is producing at a loss or at a small profit is nevertheless content with the provisions of Council Bill No. 45, it can be but upon one theory, and that is because, even at the rate fixed by Council Bill No. 45 is not as to him excessive—but it must then follow that the mine which produces at great profit is grossly undervalued—and with that situation, although the owner of the unprofitable mine may be content, neither you nor I should be, and the taxpaying public will certainly not be. The owner of mines profitable and unprofitable should not compromise away

the rights of the public. But the inequality does not stop here. I have so far spoken of producing mines. It was stated, I cannot say with what accuracy, that under the provisions of Council Bill No. 45, that producing mines would be assessed at about \$14,000,000.00, and the non-producing mines would be assessed at \$6,000,000.00. That is, on the very face of it, a gross injustice to the non-producer. If a producing mine is worth, for the purposes of taxation, one-fifth or any other fraction of its annual product, whether that product be profitable or not, the undeveloped, non-producing mine must, in the very nature of things be worth nothing. And the glaring injustice becomes more gross as the producing mine is more and more profitable. It reverses the rule that taxes should be borne in proportion to the ability of the tax payer to bear them, and makes those least able to pay, to pay the most taxes. I think I need not elaborate on that feature of the bill.

If it be said that it is because of the improvements upon non-producing mines that are taxed \$6,000,000.00, I still think it unfair. I think I may say that machinery upon an undeveloped, non-producing mine is not of the same value as that on a mine that is being profitably operated even though the machinery on both may be identical in kind, extent and character.

But if the object of fixing upon a percentage of production is to secure uniformity of valuation of mining property, which of course it does not do, that object could just as well be accomplished by taking 50, 75 or 100 per cent of, or twice, or thrice or any number of times the value of the annual production as it could by taking 20 per cent of it.

The proposition to assess producing mines at one-fifth of their annual bullion product is, I think, therefore, to summarize, unfair:

1st. As to all other classes of property because the like rule of taking one-fifth of the gross annual product

as its valuation is not applied to other property.

2nd. Because it is an unequal rule as applied to producing mines themselves, for the value of property is not determinable alone from gross products or given parts of gross products, but upon relative profits. This rule may result in the valuation of producing mines at equal sums when in fact they may bear the relation of 1 to 10 or more, in fact—that is, one may be assessed relatively at ten times as much as another and there is not only no remedy for this by Council Bill No. 45 but that bill prescribes that it shall not be remedied.

3rd. The rule of Council Bill No. 45 for assessing producing mines is grossly unjust to non-producing mines—and that injustice is more flagrant as the operation of the producing mine is more and more profitable.

The relative inequality of the assessment between producing and non-producing mines has always appealed to me as a grievous wrong. I wrote of it in my annual report of 1905, before it had even been discussed in public. I pointed it out to the assessors of the various counties in January, 1906, and am pleased to say that they generally agreed with me; and their subsequent returns showed a decided step toward the correction of that situation. I spoke of it again in an address to a convention of county supervisors held here in the capitol in June, 1906; and again I am gratified to report that their action showed a marked step toward the remedy of that injustice. Again, I called specific attention to this unfair inequality in my annual report for 1906 and again, I called your specific attention to it in my message to you at the opening of your session. I have not only talked of it, but have endeavored, and with considerable success at least contributed to the amelioration of this injustice.

I cannot refrain from an expression of my appreciation of the solicitude of those representing the large produc-

ing mines for the welfare of the non-producers.

I am fully aware of the vicissitudes that attend the efforts of the prospector. I recognize the courage, the endurance, the fidelity and the persistence of the men who hunt the hills and spy out the riches; riches of which they so seldom reap any of the benefits. We are all willing to pay a verbal tribute to the pioneer and yet withhold simple justice. We have been in the habit of taxing his patented mining claim though it may have been undeveloped and unproductive, and notwithstanding it had no value that was determinable and taxing it at the same valuation as the patented mines out of which the owner was taking hundreds of thousands of dollars yearly. I think no one will say that that was just. I am sure that it is not. I have insisted that mines should, like any other property, be assessed at their value; when that shall be done, then justice will be done to the owner of the undeveloped, unproductive mine, to the owner of the developed, productive mine, and as well to the owners of all other property—and not until then.

It is the duty of the assessor if he find that a patented mine is undeveloped, unproductive and has no value, to assess at only a nominal sum. That has always been his duty however much it may have been neglected.

And if in your judgment legislation is either needed or is desirable to protect the owners of mines not demonstrable to have any value by enacting that a patented mine, undeveloped, unproductive and having no demonstrable value shall be assessed for only a nominal sum—say not to exceed \$100.00—I will with pleasure sign such a bill.

If such mines lie idle, as they may because of the inability of the owner to develop them, the territory is not injured for the ore will remain there to await the process of development and the mine then becomes one having a demonstrable value, to the advantage of the owner and of the territory.

I do not think the intelligent owners of the undeveloped mines of this territory will insist that the only protection is the exemption of large mines from the greater share of their taxes. The proper rule is that both should be assessed at their just valuation.

But I have other objections to Council Bill No. 45:

1st. It does not provide for the taxation of a mine the owner or operator of which does not reduce the ore to bullion. Read carefully the statement provided for in Section 2 of Council Bill No. 45. It provides that the owner shall state the amount and character of the ore and the yield—not of its assay contents, but what may have been the actual yield, which is measured as pounds or ounces of metal actually produced. How can the mine owner who does not reduce his ores tell what the yield is any more than the farmer can tell the yield of flour from the wheat he has sold to the miller? It is no answer to say that most miners do reduce the ores, and that those who do not, get smelter returns. It is easy enough to change that rule. It is not any more necessary that the mining corporation should reduce their ores than it is that they should build railways to ship their supplies and products. One corporation could mine the ores and another corporation smelt them, albeit the stockholders of both might be the same just as a mining corporation may carry on the operation of a mine and another corporation, composed of the same stockholders, might build and operate a railroad for the sole convenience of the mining corporation. Then again I ask how can the owner of a mine who does not produce bullion make a return of that bullion? Section 3 provides the form of assessment list, but that list is made up from the statements provided for by section 2 and can contain nothing that is not taken from those statements. But section 4 tells us how we shall value the product, and we are confined to that method.

The assessor, that section says, shall base the value of the products upon the average quotations of each of such products in New York City. What products? The value of copper, gold, silver, etc., of course, and of course not of the quotations in the New York City market of copper ores, or copper matte, or of copper concentrates nor of gold or silver ores or concentrated ores. Tax laws are strictly construed; there is no liberality in broadening their terms; the courts construe them according to the letter and not their intent, if that be not fairly expressed. How could we tax our mines if they should ship their ores or concentrates?

2nd. Again, I object to it because it exempts from taxation the machinery and other improvements on producing mines used in mining.

If you will read section 7, you will see that that section does not authorize in itself the assessment of such improvements. Have we any other provision in Council Bill No. 45 authorizing the assessment of machinery on producing mines? Section 6 expressly provides that machinery, etc., on non-producing mines shall be assessed as other property is assessed. You of course cannot look to that section for the assessment of improvements on producing mines. The power to assess improvements on producing mines is confessedly not in Council Bill No. 45, and we are referred to the general law for that. But this act professedly dealing with this subject would preclude us from referring to a general law unless we are referred to the other law by the bill itself, as we are in section 6 as to assessment of improvements on unproductive mines, and again in section 5 where we consider appeals from assessments, and in the same section 7 when we are referred to the general revenue law for the assessment of surface ground used for other purposes than mining. But we are not even left to this rule of construction. Section 11 distinctly says that no other

tax on mines and mining claims shall be levied otherwise than as provided by Council Bill No. 45 itself.

But I understand that it is proposed to amend Council Bill No. 45 in this respect.

3rd. I further object to the bill because it provides no penalty in the event the mine owner makes no statement as required by section 2 of the act.

By section 8 it is provided that upon failure of the owner to make the sworn statement required in section 2, the assessor shall estimate the gross product and value the mine at one-fifth of that. But in no event shall he exceed that value; he acts at his peril without the information that the law provides that he shall have. The mine owner cannot be harmed if he failed to file the statement; he may be immensely benefited. What he might do under those circumstances I shall not surmise.

It is true that the assessor may subpoena witnesses and examine them concerning the gross products of ore mined but is that any efficient method?

I have gone more fully into a discussion of this bill than might appear necessary and even yet all that is objectionable is not stated. The machinery for getting information—even supposing the principle of the bill could be approved—is in my opinion wholly inadequate.

We are told that the bill is patterned after that of Colorado and some other states. I do not approve of the Colorado law, but even that is very different from Council Bill No. 45, and it may be of interest to you, as well as very significant, to point out some of the differences.

The Colorado law requires that the owner of the producing mine shall state, among other things,

The number of tons of ore extracted,
The gross value of such ores,

The cost of extracting the ores, which cost shall exclude certain salaries of officers,

The cost of transportation of ore to place of reduction or sale,

The cost of treatment, reduction or sale, and

The net proceeds in dollars and cents after deducting the above expenses.

Need I comment on the radical difference between that feature of the Colorado law and that of Council Bill No. 45?

Again, the Colorado law provides that the assessor shall determine the gross proceeds (not of bullion, but if sold then of sales) and shall also determine the net proceeds by deducting the items of cost mentioned in the statement required as I have above noted, and then shall assess the mine at one-fourth of the gross proceeds. But if the net proceeds shall exceed one-fourth of the gross proceeds, then the mine shall be valued at the net proceeds.

Council Bill No. 45 provides that producing mines shall be assessed at neither more nor less than one-fifth of their gross proceeds, no matter how profitable or unprofitable the mine may be. The Colorado law provides that it shall be at not less than one-fourth but shall, if the operation of the mine be more profitable than one-fourth of its gross proceeds, be assessed at the higher rate. And under the Colorado law ores and concentrates can be made the basis of the estimate for it provides for proceeds of reduction or sale.

I need not point out this wide divergence between the two laws: our mines at never more than one-fifth; Colorado mines at never less than one-fourth.

The Colorado law maker, too, seems to have thought that it was necessary to directly provide for the assessment of improvements on producing mines and does so in express terms.

Again, in Colorado if the mine owner neglects to make the statement, it is made the duty of the assessor to assess the mine at its full value—in Council Bill No. 45 at one-fifth of its gross pro-

ceeds. Why these provisions are left out of Council Bill No. 45 when we are told that Council Bill No. 45 is patterned after the Colorado is not for me to surmise. If it were mere inadvertence, then I submit that the advocates of the bill are not safe counsellors for there may be other inadvertences. If they were omitted purposely then there is a deliberate attempt to betray and outrage the public. I shall not further discuss it here. I may add that the omissions from Council Bill No. 45 which I have noted are not omitted from the Montana law, but are there.

It is my firm conviction that the proposed law would be ineffective for the taxation of the property of any mining company that might undertake systematically to evade the payment of its taxes.

Assuming that all mining companies would try honestly to comply with the provisions of Council Bill No. 45—an assumption which is not warranted by our experience—it is still true, as I have said, that the question whether this or that amount of revenue would be raised by the bill is one of secondary importance, so long as that revenue comes from an unfairly low valuation. But we cannot safely take it for granted that all mining companies would honestly try to comply with the provisions of the bill, and we cannot safely take it for granted that any given amount of revenue would be raised. The calculations and computations made for you by interested attorneys are based upon the present high price of copper. Who can guarantee that the price of copper will not fall in the future to materially lower figures? More important still, who can guarantee that all of the great copper mines in this territory will be continuously operated? Who can guarantee that the application of trust methods may not result in shutting down some of the greatest producers in order to maintain prices at satisfactory figures? Please remember that you are not asked to legislate for this year alone, but for the

unnumbered years of the future. Who can guarantee that other causes which readily suggest themselves may not lead to the shutting down of some of our greatest mines for indefinite periods? And if one of these enormously valuable mines is shut down, what will be the product tax for that period?

In the discussion which took place before you a few days ago, you were assured by the attorneys for great mining companies that council bill 45 in effect represented the consensus of opinion of the mining states. The inference was that if you should enact this bill into law you would be following in the footsteps of the great mining states which have had years of experience with the taxation of mines. I have shown to you that this bill is a radical departure from the law of Colorado, which you were assured it followed, and falls far short of the provisions of the Montana law. The framers of this bill—and it seems fair to the honorable member who introduced it to say that he was not the author of the measure—were careful to leave out of it the provisions which tend to make the Colorado law effective of the principle of taxation of taking a portion of proceeds as the valuation of mines. This bill is like the law of no state and cannot therefore be in accord with the consensus of opinion of any group of states.

I have to say further that California, one of the greatest mining states in the union, and one of the earliest noted for that industry, assesses and taxes mines as other property is assessed and taxed, in that respect being like Arizona. I may call to your attention that in 1881 Arizona had a bullion tax, out of which so little was realized that in that year our own territory abandoned the system.

But, most important of all, since your attention has been invited to the customs of other states, I have to say that Michigan is the oldest state of

all in point of experience in dealing with the question of mine taxation. And Michigan, after trying sundry experiments, among them basing value upon proceeds, has returned to the ad-valorem system—the principle upon which Arizona statutes have been based for more than a quarter of a century. And the mining property in Michigan for the last tax year was assessed at one hundred and eighteen millions of dollars. For your further information I submit the following telegram which I received on February 27th from the county clerk of Houghton county, Michigan—the official who keeps the records of assessments for his county:

"Houghton, Mich., Feb. 27, 1907.

"Joseph H. Kibbey, Governor,

"Phoenix, Arizona.

"Assessed valuation for taxation for last tax year; Calumet & Hecla mine, thirty-seven million dollars; reduction works, four million dollars. Tamarack Mining company, mine and mills, three and one-half million dollars. Osceola Consolidated Mining company, mine and mills, six million dollars. Baltic Mining company (mine only), six million dollars. Tri-Mountain Mining company (mine only), six million dollars. Champion Copper company, nine million dollars, mine and mill.

"L. H. RICHARDSON,

"County Clerk."

These official figures instantly suggest some interesting comparisons between the great copper mines of Michigan and of Arizona. The Baltic mine of Michigan has a paid-in capital of \$1,800,000. The Calumet & Arizona of Arizona is capitalized at \$2,500,000, of which \$2,000,000 have been paid.

The copper production of the Baltic mine in 1905 scarcely equaled one-half the production of the Calumet & Arizona. And in 1906 the production of the Calumet & Arizona vastly exceeded the production of the Baltic. Yet, in 1906 the Baltic mine was assessed at six million dollars, while the Calumet & Arizona mines were as-

sessed at less than eighty-two thousand dollars, and all their other property at \$218,714.70. In other words, although the Calumet & Arizona mines yield a greater production than the Baltic and pay much greater dividends, the Baltic mine is assessed for taxation at a valuation seventy-two times greater than that of the Calumet & Arizona.

The Champion mine of Michigan is capitalized at \$2,500,000. The United Verde mine of Arizona is capitalized at \$3,000,000, and in addition to its capital stock, bonds to the amount of \$2,998,800 have been issued. The copper production of the Champion mine in 1905 was about one-half the copper production of the United Verde. And in 1906, the production of the United Verde again exceeded the Champion. Yet, in 1906, the Champion mine and mill were assessed at nine million dollars, while the United Verde mine was assessed at \$736,085, and its other property at \$445,300. In other words, the assessment on the United Verde property was not one-seventh of the assessment of the Champion property.

The Copper Queen of Arizona is capitalized at \$2,000,000. The Calumet & Hecla of Michigan has an authorized capital of \$2,500,000, of which \$1,200,000 in paid-in. The production of the Calumet & Hecla mines and of the Copper Queen mines runs substantially the same. Last year, according to the most reliable information, the production of the Copper Queen exceeded the production of the Calumet & Hecla. And yet, in 1906 the Copper Queen mines were assessed at \$502,203.20, while the Calumet & Hecla mines were assessed at \$37,000,000. The reduction works and all other property of the Copper Queen were assessed at \$1,870,854.64, while the reduction works of the Calumet & Hecla were assessed at \$4,000,000. The total assessment of the Copper Queen was \$2,373,057.84, while the properties

of the Calumet & Hecla were assessed at \$41,000,000. In other words, the assessment of the Calumet & Hecla was more than seventeen times greater than the assessment of the Copper Queen.

The facts and the figures speak for themselves. When it is argued that if the great-copper mines of Michigan are assessed at figures somewhat approaching their value, the tax rate in Michigan is very low, the immediate answer to that is that if the great copper mines of Arizona were assessed at figures somewhat approaching their value, the tax rates in Arizona would fall to very nominal figures; and that if the tax rate on Michigan mines is low, it is also low on every other class of property there.

The bill transmitted herewith amends many paragraphs of the present revenue law, and for your conventions as to the purpose and extent of said amendments, taking up each paragraph in its order:

Paragraph 3832 is amended by changing the date when the tax levy shall be fixed by the county board of supervisors from the third Monday in August of each year to the first Monday in September. The object of this change is to require the board of supervisors to base their levy for all purposes upon the valuations as finally equalized by the territorial board of equalization, which they can not do under the present law, as they are now required to make the levy before the changes made by the territorial board can reach them.

Paragraph 3833 is amended so that the tax lien shall attach on the first day of January instead of on the first Monday in February. The advantage of such an amendment is obvious and needs no comment.

Paragraph 3847 is amended by commencing the assessing period on the first day of January and ending the same on the first Monday in May.

This gives the assessor slightly more time than he has under the present law, and at the same time affords more time for the preparation of the original assessment roll and other matters than is now given.

Paragraph 3848 is amended by making it the duty of every person owning assessable property to deliver a list thereof to the assessor between the first day of January and the first Monday in May of each year.

Paragraph 3852 is amended by omitting therefrom "telegraph lines," the assessment of which is in a subsequent paragraph given over to the territorial board of equalization. Said paragraph is further amended by providing that where two or more contiguous or adjacent mining claims are in one ownership, they may be assessed either separately or as a group and that where such claims are assessed as a group the tax lien shall attach to all the claims comprising said group. The assessor shall, however, list each and every claim comprising said group and designate the group by the name by which it is most commonly known, but the assessment shall be valid if made against the claims severally and not as a group, if the sums of the valuations in detail shall not exceed their cash value in the aggregate.

Paragraph 3858 is amended as follows: By giving the board of equalization the power, at its meeting to be held on the second Monday of April in each year (instead of on the first Monday in June, as at present), in addition to the power it already has of assessing railroad property, to assess the property of telegraph and long-distance telephone companies, express companies, sleeping car companies, refrigerator car companies, tank line car companies, stock car companies and the property, cars, rolling stock and other equipment of any company, companies or corporations other than railroad

companies owning trackage within this territory, which is or may be taxable herein, with suitable provisions as to the manner in which such additional assessments may be made.

Paragraph 3861 is amended by making it the duty of the assessor to prepare, in addition to the "original assessment roll," as now required by law, a roll to be known as the "Special Personal Property Assessment Roll," in which he shall list all personal property, the tax upon which is not secured by a lien upon real estate of sufficient value in his judgment to cover the tax upon said real estate, as well as the tax upon said personal property. He is made responsible on his official bond for all taxes appearing on said roll and must make a monthly report to the board of supervisors of all taxes collected upon assessments made therein and pay said taxes at the same time into the county treasury. On the second Monday of December of each year the assessor must make a full settlement with the board of supervisors for all taxes appearing in said roll and he is made liable upon his official bond for all taxes thereon remaining uncollected at that time, unless for good cause shown or appearing the board of supervisors shall by an order entered in its minutes release said assessor from liability for aid taxes or any part thereof.

Paragraph 3862 is amended by making the form of the assessment roll conform to the style already prescribed by the public examiner, and in use in the several counties.

Paragraph 3864 is amended merely by changing the date from the third Monday in June to the third Monday in May, as the time within which the assessor shall complete his assessment roll and deliver it to the clerk of the board of supervisors.

Paragraph 3867 as amended changes the time of the meeting of the county

board of equalization from the first day of July of each year to the tenth day of June and fixes the limit of said session at June 30th instead of July 20th. It also provides that when it adjourns at its June meeting it shall meet again on the 25th day of July, at which meeting it shall have the same powers it possessed at its June meeting, excepting as provided in paragraph 3868.

Paragraph 3868 is left the same as at present except that the county board of equalization is forbidden to lower any assessment after the June meeting.

Paragraph 3869 is amended by changing the dates to conform to the changes already mentioned.

Paragraph 3870 is amended only in the same particulars as paragraph 3869.

Paragraph 3872 is amended by adding a provision that the county board of equalization shall cause a record of its action in all cases to be entered upon its minutes and shall also note any changes upon the assessment roll in such manner that such changes may be intelligibly ascertained and given effect in making out the duplicate assessment roll.

Paragraph 3874, which prohibits any assessor, board of supervisors or territorial board of equalization from assessing any real estate at a less valuation than 75c per acre is repealed, the courts having held such legislation to be invalid as an attempt on the part of the legislature to usurp the functions of the assessor.

Paragraph 3877 is amended by requiring the clerk of the board of supervisors to transmit a copy of his abstract of the equalized assessment roll to the territorial auditor so that the same will reach the auditor in the usual course of mail on or before the second Monday in August. It also authorizes the territorial board to require "other classifications of prop-

erty to be returned" in addition to the matter which said paragraph at present authorizes it to require.

Paragraph 3879 increases the number of days for which the members of the territorial board may receive compensation from twenty in each year to thirty. Another amendment eliminates the provision that "if any of said members fail to attend any meeting of the board it shall be the duty of the governor to appoint a competent person to act in the place of said absent member," and provides in lieu of said provision that "a majority of said board shall constitute a quorum for the transaction of business and any act or acts done or performed by such quorum shall be as legal, valid and binding as though done or performed by the entire board." A further amendment provides that the board shall sit at the office of the territorial auditor on the second Monday in April of each year as provided, and for the purpose mentioned, in paragraph 3858, and that it shall also meet on the second Monday in August for the purpose of equalizing the rates of assessment in the various counties. The amendment also gives it the power, for its information, to summon witnesses and to compel the production of books and papers and to enforce obedience to subpoenas or orders, giving it for that purpose all the powers conferred upon boards of supervisors by paragraph 980. Said amendment also increases the allowance for its secretary from a sum not exceeding three hundred dollars to a sum not exceeding five hundred dollars in any one year, and increasing the appropriation for incidental expenses and necessary supplies from a sum not exceeding one hundred dollars to a sum not exceeding two hundred and fifty dollars.

Paragraph 3880 is amended to conform to the decision of the supreme court, giving the board the power to

increase or diminish the valuation of "any class or classes" of property in any county as much as in the judgment of said board may be necessary to produce a just relation between the valuations of all the property in the territory, and "for the purposes of such equalization said board may raise the aggregate valuation of the property in all the counties above the aggregate valuation as returned by the boards of supervisors of the several counties." Another amendment to said paragraph provides that "the valuation as finally equalized by said territorial board shall be the basis upon which all county and territorial taxes shall be levied" and that "no county board of supervisors shall have the right to change, increase or diminish any valuation after the equalization thereof by the territorial board."

Paragraph 3831 is amended by providing that as soon as any county board of supervisors shall receive from the territorial auditor a statement of the territorial tax rate levied by said territorial board and of the changes, if any, which have been made in the assessment by the territorial board, said supervisors shall immediately, by an order entered upon its minutes, cause such changes to be made in and carried out on the assessment roll, so that such roll shall conform to the equalization of values as determined by the territorial board.

Paragraph 3882 is amended by providing that as soon as the supervisors of each county shall have levied the taxes as provided in this title, they shall add up the columns of valuation as finally equalized by the county and territorial boards, and enter the total equalized valuation of each description of property on the roll. A further amendment provides that the "duplicate assessment roll" shall be delivered to the tax collector on or before the first Monday in October instead

of the third Monday in September, as at present.

Paragraph 3884 is amended merely by prescribing the form of assessment roll devised by the public examiner and already used in the several counties.

Paragraph 3896 is amended by giving any person who may have been summarily taxed by the tax collector after the duplicate assessment roll is committed to him, notice of such assessment and an opportunity to appear before the tax collector and be heard touching such assessment.

Paragraph 3908 is amended by changing the date when taxes shall become delinquent, from the third Monday in December to the second Monday in December.

Section 2 of the proposed law provides that the act shall take effect and be in force from and after its passage, with a saving provision that the tax lien for the year 1907 shall be deemed to have taken effect at the same time and with the same force and effect as though this act had not been passed, but in each year hereafter such lien shall attach and take effect on the first day of January.

The principal purpose of these amendments is to eliminate defects and inconsistencies from the present law, and one of the most valuable of these amendments is that which provides that the territorial board of equalization shall at its August meeting be provided with an abstract of the equalized assessment roll of each county, instead of, as at present, an abstract of the original assessment roll, which may be so greatly changed as either to neutralize the action of the territorial board or to render its action highly unjust. In other words, it is now compelled to act upon figures that are in suspension and unstable, so that in the very nature of things it can hardly act intelligently. Under the proposed revision it will

act upon an abstract of the equalized assessment roll, and consequently upon valuations that are fixed and certain, an object which the legislature has probably always intended.

Another important improvement is that local boards of supervisors now make their tax levy upon valuations finally equalized by the territorial board; therefore the levies will be made upon valuations that will not thereafter be changed by the territorial board.

But the most desirable change is that proposed in paragraph 3880, which makes the changes ordered in the assessment of any county by the territorial board effective for the purpose of the county as well as the territorial tax. There has been such uncertainty upon this point heretofore that in several counties the increases made by the territorial board of equalization were only respected in so far as the territorial tax was concerned. Such an uncertainty, leading as it does to obvious complications and embarrassments, will be eliminated from the law by the proposed amendment. Of equal merit is that which permits a

more distinct and exclusive classification of mines, as well as all other kinds of property. Under the provisions of this bill, it would be practicable to place copper mines in one class, gold and silver mines in another class, and non-producing mines in another class, and so on. Then if it is found necessary for the territorial board to raise or lower the valuation of one class of mines in a given county, the mines in other classes in that county would not be affected by the increase, or decrease of the class in question. That is to say, if it should be necessary to raise, for instance, the valuation of producing copper mines, it can be done without disturbing the valuation of non-producing copper mines, or gold and silver mines, or any other class of mines. I am hopeful, however, that the assessment of mines hereafter by assessors and local boards, elected by the people, will be so fair that it will not be necessary for the territorial board to take any action upon such assessments whatever.

JOSEPH H. KIBBEY,
Governor.